

### RESPONSE

This Response supplements the Amendment in Response to Final Office Action Under 37 C.F.R. § 1.116 filed December 13, 2006 and is responsive to the Advisory Action dated January 19, 2007 received in the above-captioned application.

Although the Advisory Action stated that Applicant's reply overcame the rejection under 35 U.S.C. § 112, first paragraph, it further stated that the application was not in condition for allowance because claims 27, 29, 31-40,<sup>1</sup> 44, 48-52, 54, 56-64, 67, and 71-76 stand rejected. *See* Advisory Action, p. 1. The Advisory Action stated, "The accompanying IDS brings up the issue of obviousness-type double patenting with 11/469,213 in that both claim a prosthetic [*sic*] device with the same composition." *See id.* at p. 2.

A Second Preliminary Amendment Under 37. C.F.R. § 1.115 is being filed today, February 13, 2007, in U.S. Application No. 11/469,213 (the '213 application) cancelling claim 1, directed to a bio-stable hydrogel, and claim 18, directed to a prosthetic device for increasing the resistance of conduits. Therefore, the only claims that will be pending in the '213 application are directed to a method of treating anal incontinence.

The present application, on the other hand, claims a prosthetic device for soft-tissue augmentation and a method of soft tissue augmentation. Soft tissue is very different from the tissue related to the treatment of anal incontinence, such as the sphincter of the rectum. Consequently, the material suitable for imitating soft tissue does not anticipate, nor render obvious, a material having the appropriate rheological properties for treating anal incontinence. For example, ionic salt solutions and silicon gel, alone or in combination, are used for soft tissue augmentation, such as breast augmentation. However, such prosthetic devices are not suitable in the treatment of anal incontinence. Thus, it is surprising that a similar material may be used for very different methods, such as soft-tissue augmentation and the treatment of anal incontinence.

Finally, the Advisory Action stated, "No record could be found for an IDS filed 06/25/2005 and a copy of the postcard receipt of fax transmission will be required." A Supplemental Information Disclosure Statement was filed on June 20, 2005 with a Petition for Withdrawal From Issue Under 37 C.F.R. § 1.313 and a Request for Continued Examination. A

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<sup>1</sup> Applicant respectfully submits that claim 34 was cancelled in an Amendment filed January 9, 2006.

copy of the aforementioned documents and the date-stamped postcard indicating receipt of the documents in the USPTO are submitted herewith. Applicants respectfully request the return of a copy of the Form PTO-1449 with the Examiner's initials in the left column in accordance with M.P.E.P. § 609.

### CONCLUSION

For at least the reasons stated above, claims 27, 29, 31-33, 35-40, 44, 48-52, 54, 56-64, 67, and 71-76 are in condition for allowance. Accordingly, Applicant respectfully requests that the Application be allowed and passed to issue.

In the event any outstanding issues remain, Applicant would appreciate the courtesy of a telephone call to Applicant's undersigned representative to resolve such issues in an expeditious manner.

It is believed that no additional fees are due with the filing of this Response. However, if the U.S. Patent and Trademark Office determines that any variance exists between the amount due and the amount authorized above, the Commissioner is authorized to credit or debit any such variance to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

HUNTON & WILLIAMS LLP

Date: February 13, 2007

By: 

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# PATENT

☐

PROVISIONAL

☒

UTILITY

09/938,669

☐

DESIGN

☐

PCT

Application No.: 09/938,669

Date: June 20, 2005

Client/Matter No.: 60117 000004

Client: Contura SA

Filing Date: August 27, 001

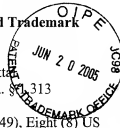
Inventor(s): Jens PETERSEN

Atty/Sec.: SA/VAS/bvh

Title: POLYACRYLAMIDE HYDROGEL AS A SOFT TISSUE FILLER  
ENDOPROSTHESIS

The following has been received in the U.S. Patent and Trademark  
Office on the date stamped hereon:

- ☒ Request for continued Examination (RCE) Transmitted
- ☒ Petition for Withdrawal From Issue Under 37 C.F.R. § 1.313
- ☒ Supplemental Information Disclosure Statement
- ☒ List of Materials Cited by Applicant (Form PTO-1449), Eight (8) US  
Patent Documents (included) and Six (6) Foreign Patent Documents  
(Attached)
- ☒ Two Checks: \$130.00 (Petition for Withdrawal) and \$790.00 (RCE)
- ☒ Return Postcard Receipt



6/20/05

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent Application of:

Jens PETERSEN

Serial No.: 09/938,669

Filing Date: August 27, 2001

Group Art Unit: 1615

Examiner: Carlos A. Azpuru

Title: POLYACRYLAMIDE HYDROGEL AS A SOFT TISSUE FILLER  
ENDOPROSTHESIS

**MAILSTOP PETITION**

Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

**PETITION FOR WITHDRAWAL FROM ISSUE UNDER 37 C.F.R. § 1.313**

Sir:

Applicants paid the Issue Fee on April 6, 2005. Applicants hereby petition under 37 C.F.R. § 1.313 that the above-identified patent application be withdrawn from issue to permit consideration of an Information Disclosure Statement (including Form PTO/SB/08A and cited references) in connection with a Request for Continued Examination under 37 C.F.R. § 1.114, both filed herewith.

A check in the amount of \$130.00 to cover the petition fee under 37 C.F.R. § 1.17(h) is enclosed. It is believed that no additional fees are due. However, if it is determined that any other fees are required, the Commissioner is authorized to charge such fees to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

Date:

*June 29, 2005*

By:

*Stanislaus Aksman*  
Stanislaus Aksman

Registration No. 28,562

**HUNTON & WILLIAMS, LLP**

Intellectual Property Department

1900 K Street, N.W., Suite 1200

Washington, DC 20006-1109

(202) 955-1500 telephone number

(202) 778-2201 facsimile number

# REQUEST FOR CONTINUED EXAMINATION (RCE) TRANSMITTAL

**MAIL STOP RCE**

COMMISSIONER FOR PATENTS

P.O. BOX 1450

ALEXANDRIA, VA 22313-1450

Application Number **09/938,669**Filing Date **August 27, 2001**First Named Inventor **Jens PETERSEN**Art Unit **1615**Examiner Name **Carlos A. AZPURU**Attorney Docket No. **60117.000004**

**This is a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114 of the above-captioned application.**  
Request for Continued Examination (RCE) practice under 37 C.F.R. § 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

**1. Submission required under 37 C.F.R. § 1.114** (Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).)

- a. ☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.
- i. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on \_\_\_\_\_
- ii. ☐ Other: \_\_\_\_\_
- b. ☒ Enclosed
- i. ☐ Amendment/Reply
- iii. ☒ Information Disclosure Statement (including Form PTO-1449 and References)
- ii. ☐ Affidavit(s)/Declaration(s)
- iv. ☐ Other: \_\_\_\_\_

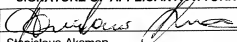
**2. Miscellaneous**

- a. ☐ Suspension of action on the above-captioned application is requested under 37 CFR. 1.103(c) for a period of \_\_\_\_\_ months. (Period of suspension shall not exceed three months; Fee under 37 CFR 1.17(f) required.)
- b. ☐ Other: \_\_\_\_\_

**3. Fees** The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

- a. ☒ The Fees are calculated as follows:
- |  | AMOUNT           | <input checked="" type="checkbox"/> Large Entity   | <input type="checkbox"/> Small Entity             |
|--|------------------|--|---|
| i. <input checked="" type="checkbox"/> RCE BASIC FEE | \$ <b>790.00</b> | \$ 790.00  | \$ 395.00   |
| ii. <input type="checkbox"/> EXTENSION FEES          | \$ <b>0.00</b>   | One-Month \$ 120.00<br>Two-Month 450.00<br>Three-Month 1020.00<br>Four-Month 1590.00<br>Five-Month 2160.00 | \$ 60.00<br>225.00<br>510.00<br>795.00<br>1080.00 |
| iii. <input type="checkbox"/> OTHER                  | \$ <b>0.00</b>   | \$ 0.00  | \$ 0.00   |
- b. ☒ Check in the amount of \$**790.00** is enclosed. The Commissioner is hereby authorized to charge any variance between the amount enclosed and the Patent Office charges to **Deposit Account No. 50-0206**.
- c. ☐ The Commissioner is hereby authorized to charge the fees as indicated above, or credit any overpayments, to **Deposit Account No. 50-0206**.

**SIGNATURE OF APPLICANT, ATTORNEY OR AGENT REQUIRED**

Signature		Date	June 20, 2005
Typed or Printed Name	Stanislaus Aksman	Registration No.	28,562

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re U.S. Patent Application of:	)	
Jens PETERSEN	)	Group Art Unit: 1615
Application No.: 09/938,669	)	Examiner: Carlos A. Azpuru
Filing Date: August 27, 2001	)	
Title: POLYACRYLAMIDE HYDROGEL	)	
AS A SOFT TISSUE FILLER	)	
ENDOPROSTHESIS	)	

**SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In accordance with 37 C.F.R. §§1.97 and 1.98, and in compliance with the duty of disclosure set forth in 37 C.F.R. §1.56, Applicants submit attached Form PTO-1449 for consideration and request the references cited therein (copies enclosed) be made of record by the U.S. Patent and Trademark Office in the above-captioned application.

English Translations of the cited foreign references, which are not in English, will be filed in a subsequent Supplemental Information Disclosure Statement when they become available.

Applicants respectfully point out that the submission of the listed references in this Information Disclosure Statement is not an admission that they are prior art or that they are material to patentability of any claims of the application. Also, the submission of this Information Disclosure Statement is not an indication that a search has been made by Applicants.

Consideration of the foregoing plus the prompt return of a copy of the enclosed Form PTO-1449 with the Examiner's initials in the left column in accordance with M.P.E.P. § 609 are respectfully requested.

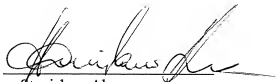
In accordance with 37 C.F.R. §1.97(b), this Information Disclosure Statement is filed in connection with a Request for Continued Examination, and therefore it is believed to be submitted prior to issuance of a first Office Action. Therefore, it is respectfully submitted that no fee is required for consideration of this information. However, in the event any fee is deemed necessary, the Commissioner is authorized to charge the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

Date:

June 20, 2005

By:

  
Stanislaus Aksman  
Registration No. 28,562

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SERIAL NO  
09/938,669

### LIST OF MATERIALS CITED BY APPLICANT

(Use several sheets if necessary)

INVENTOR'S NAME:  
Jens PETERSEN

EXAMINER:  
Carlos A. Azpuru

FILING DATE:  
August 27, 2001

GROUP:  
1615

## U.S. PATENT DOCUMENTS

*EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUBCLASS	FILING DATE
	1.	5,941,909	8/24/1999	Purkait			
	2.	5,589,104	12/31/1996	Bambeck			
	3.	5,482,719	1/9/1996	Guillet, et al.			
	4.	5,344,451	9/6/1994	Dayton			
	5.	5,244,799	9/14/1993	Anderson			
	6.	5,135,480	8/4/1992	Bannon, et al.			
	7.	4,746,551	5/24/1988	Allen, et al.			
	8.	4,657,656	4/14/1987	Ogawa			

## FOREIGN PATENT DOCUMENTS

[illegible]

EXAMINER

DATE CONSIDERED

\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.